

From: GEORGE GRANDY
To: Microsoft ATR
Date: 1/15/02 12:30am
Subject: MICROSOFT SETTLEMENT

DEarest Judge;

there are five huge problems I see with the PFJ as it currently stands - and I hope that you will use the power of your good office to correct these egregious errors before this is made the law of our good land:

1. Communication Protocols: The Agreement states that Microsoft must now share information on how its middleware and server software work together with Windows. However, Microsoft does not have to disclose this information for middleware it does not distribute separate from windows, or for middleware it has not trademarked. This is a huge loophole, because if Microsoft wants to drive a competitor out of business, they just attach the specific type of software the competitor is involved with to their Windows platform. Once they do that, they do not have to share the coding information that allows the competitors software to work with Windows, thus driving the competitor out of business. Once the competitor is out of business, Microsoft can separate the software from the Windows package, sell it separately and derive huge margins. In addition, Microsoft does not have to disclose their information to companies that in ?their view? do not have a ?viable business?. This loophole will allow Microsoft to prevent new software start-ups from forming which, to say the least, is very bad for competition, and therefore, the consumer.

2. No Penalty For Undisputed Illegal Activity. Microsoft is not penalized for any past misdeeds. In other words, they are being allowed to retain all the profits gained from their illegal activities. Every court involved with this case has acknowledged that Microsoft broke the Anti-trust laws. Through this Agreement, the Justice Department is sending the message that this sort of anticompetitive behavior is acceptable. Every large potential monopolistic company is being told that they can get away with this sort of illegal behavior without fear of losing any of the gains made from such conduct. In other words, get away with as much as you can until the Justice Department brings an action. There is every incentive for future monopolists to engage in this type of conduct and no incentive not to.

3. Middleware: As part of the Agreement Microsoft is required to allow the PC manufacturers to hide Microsoft middleware programs and allow them to install icons or links to competing middleware programs. The only problem is that the PC manufacturers are not allowed to remove the code that could be used to reactivate Microsoft?s middleware programs. In other words, two weeks into owning the machine, a consumer could be asked if they want to reconfigure their desktop, install all the Microsoft middleware and delete all the competitor?s middleware.

4. The Three-Man Compliance Team. The Agreement requires a three-man compliance team to oversee Microsoft's compliance with the Agreement. Microsoft will appoint one person, the Justice Department another, and the third will be chosen by the two people already appointed. This new team will not be allowed to inform the public of their work, and cannot impose fines. Their sole remedy for infractions is informing the Justice Department of the infraction and then the Justice Department will have to commence litigation to stop the infraction. The Justice Department does not need a compliance group to tell them when Microsoft is doing something wrong, so in reality this group is just a smoke screen.

5. Market Share. All other businesses in the U.S. market that have a ninety percent market share are considered per-se monopolies and are regulated or have some sort of government oversight (i.e. utilities, local phone companies, cable companies etc.). This is done because it is in such a company's best interest (in the interest of their shareholders) to abuse their position. In other words, to gain maximum shareholder value, they are almost required to abuse their position. Why is Microsoft allowed a waiver to this general rule? Does Microsoft not try to gain optimum share value for their shareholders?

Judge: this agreement looks badly flawed - especially to anyone that has been in the industry for years and has seen MS again and again abuse its monopoly powers. I've been a CEO of a number of small software companies -and am one right now. The PFJ will put those of us depending on Java in a very precarious position strategically.

Help make this right. Our entire industry is counting on you.

George Grandy

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